

**COLLECTIVE BARGAINING CASES BEFORE BOPA HEARING OFFICERS
1992-2000**

UNFAIR LABOR PRACTICE CASES

ULP Charge No. 16-93, Glendive Education Association, MEA/NEA, Complainant, vs. Glendive Elementary School District No. 1: Trustees and Superintendent, Dan Martin, Defendant.

Recommended Order issued May 26, 1993 by Hearing Examiner Joe Maronick.

Attorneys: Donna Davis for Complainant; Richard Simonton for Defendant.

Bypassing Union, Bargaining Individually [01.21, 03.22, 09.25, 11.51, 15.01, 15.121, 21.12, 21.13, 21.4, 22.41, 34.31, 43.11, 43.13, 43.98, 72.17, 72.55, 74.39]

School district unlawfully bargained individually with physical education teacher thus bypassing union in violation of 39-31-305 (1). Teacher is not independent contractor as claimed by district but actual employee covered by contract, remedy is that district bargain with union.

ULP Charge No. 21-93, Glendive Education Association, MEA/NEA, Complainant, vs. Glendive Elementary School District No. One: Trustees and Superintendent, Dan Martin, Defendant.

Recommended Order issued May 2, 1993 by Hearing Examiner Joe Maronick.

Attorneys: Donna Davis for Complainant; Richard Simonton for Defendant.

Independent Contractor Status [21.12, 21.13, 21.3, 21.4, 43.98]

Teacher is not independent contractor, but regular employee subject to employer district's direction and control. School district unlawfully refused to process teacher's dues authorization.

Bypassing Union, Bargaining Individually [01.21, 03.22, 09.25, 11.51, 15.01, 15.121, 21.12, 21.13, 21.4, 22.41, 34.31, 43.11, 43.13, 43.98, 72.17, 72.55, 74.39]

School district unlawfully bargained individually with physical education teacher thus bypassing union in violation of 39-31-305 (1), 201, 203 & 401 (1), (2) & (5). Remedy is that district bargain with union over teacher who is found to be part of bargaining unit.

ULP Charge No. 23-93, Wolf Point Education Association, MEA, NEA, Complainant, vs. Wolf Point Public School Districts No. 45 and 45A, Defendant.

Recommended Order issued November 28, 1994 by Hearing Examiner Gordon Bruce.

Representatives: John K. Addy, Esq. for Complainant; Rick D'Hooze for Defendant.

Past Practice, Unilateral Change [06.3, 09.231, 09.31, 09.612, 11.51, 15.121, 21.4, 34.31, 43.432, 43.442, 43.444, 43.619, 46.11, 46.641, 72.52, 72.532, 72.533, 72.612, 72.614, 72.664]

School district, by preponderance of evidence, did not violate 39-31-305 (1) & (2) & 401 (5) by unilaterally reducing teachers' lunch hour by 10 minutes. No longstanding practice was established, district has contractual right to make change without bargaining.

ULP Charge No. 30-93, Silver Bow Stationary Engineers Local Union No. 375, IUOE, AFL-CIO, Complainant, vs. Butte-Silver Bow Government, Defendant.

Recommended Order issued April 27, 1993 by Hearing Examiner Joe Maronick.

Representatives: Charles Davies for Complainant; John T. Johnston, Esq. for Defendant.

Residency Requirement, Employee Termination [09.32, 09.33, 11.22, 11.23, 15.65, 34.12, 43.47, 43.99]

City-county did not violate 39-31-401 (1) & (5) by terminating employee who did not meet residency requirement. Employer did not waive requirement for employee and union failed in its burden of proof to show unfair labor practice.

ULP Charge No. 28-94, Roy Education Association, MEA/NEA, Complainant, vs. Roy Elementary and High School District No. 74, Defendant.

Recommended Order issued December 19, 1994 by Hearing Officer Gordon Bruce.

Attorneys: J. Dennis Moreen for Complainant; Michael Dahlem for Defendant.

Discrimination, Antiunion Animus, RIF [07.31, 09.32, 11.51, 15.121, 21.2, 21.4, 22.74, 34.31, 43.11, 43.46, 43.53, 43.612, 43.618, 43.96, 72.311, 72.331, 72.352, 72.585]

School district did not violate 39-31-401 (1) in non-renewing certain teachers, implementing a reduction in force, assigning union officer multiple classes in same period and assigning certain classes to teachers other than union officers. Union failed to

prove any independent or derivative violations and failed to meet three pronged test from Missoula County High School v. BOPA, 224 Mont 50, 727 P.2d 1327 (MtSupCt 1986). District had legitimate business reasons for its actions.

ULP Charge No. 75-95, Laborers' Local No. 254. Affiliated with the Laborers' International Union of North America, AFL-CIO, Complainant, vs. State of Montana, Department of Administration, General Services Division, Defendant.

Recommended Order issued January 16, 1996 by Hearing Officer Stan Gerke.

Attorneys: Karl Englund for Complainant; Vivian Hammill for Defendant.

Threat, Strike [09.12, 09.36, 11.21, 15.31, 21.5, 21.8, 43.120, 62.2, 62.31, 62.36, 62.52, 71.31, 72.131, 72.3521]

Supervisor did not threaten employees in violation of 39-31-401 (1), (3) & (5) after strike vote in making comments about privatization of state mail service and the need for a bullet-proof vest. He made a prediction of privatization protected by Gissel Packing, 395 US 575, [71 LRRM 2481] (1969) and the bullet-proof vest comment was made in context of joking.

ULP Charge No. 3-96, Anne M. Carpita, Complainant vs. Anaconda Teachers' Union Local #502, Defendant.

Recommended Order issued March 11, 1998 by Hearing Officer Stan Gerke.

Attorneys: Virginia Knight for Complainant; David McLain for Defendant.

Duty of Fair Representation, Refusal to Process Grievance [07.53, 09.25, 09.412, 15.121, 21.13, 21.7, 23.23, 23.61, 23.62, 34.31, 47.21, 47.31, 47.55, 73.113, 73.51]

Union did not breach its duty of fair representation nor violate 39-31-402 (1) by not taking former member's grievance to arbitration. At the time of filing , grievant was not a teacher in that district nor bargaining unit member. Union is not liable for grievant's personal attorney fees either.

ULP Charge No. 21-96, Jim R. Wagner, Complainant, vs. Federation of Montana State Prison Employees, Local #4700, Montana State Prison, Defendant.

Recommended Order issued March 7, 1997 by Hearing Officer Gordon Bruce.

Representatives: Jim Wagner, pro se Complainant; Tom Burgess for Defendant.

Duty of Fair Representation, 4-10's [09.13, 11.21, 15.42, 21.7, 23.24, 41.33, 41.63, 43.432, 47.21, 73.113, 73.51]

Union did not breach its duty of fair representation by not taking an individual member's grievance to arbitration. Employer prison had right under contract to change experimental 4-10 schedule that was not valid under terms of contract back to 5-8 schedule. Union executive board found no merit to grievance since contract spelled out only 5-8 schedule despite contention by individual member who wanted to retain 4-10's.

ULP Charge No. 6-97, Browning Federation of Teachers, Local No. 2447, Complainant, vs. Browning Public Schools, Roger Helmer, Superintendent, Defendant.

Recommended Order issued September 3, 1997 by Hearing Officer Joseph V. Maronick.

Representatives: Tom Burgess for Complainant; Rick D'Hooze for Defendant.

Drug & Alcohol Testing, Refusal to Bargain, Time Clock [11.51, 15.121, 21.4, 43.472, 72.5 72.511]

School district did not violate 39-31-401 (1) & (5), it only requested bargaining with union over drug and alcohol testing proposal, it didn't actually implement testing. Neither did district install any time clocks, it did require teachers to sign in and out as outlined by existing policy incorporated into labor agreement.

ULP Charge No. 10-98, Montana District Council of Laborers Local No. 1334, Complainant, vs. Flathead County, Flathead County Animal Control, Flathead Board of County Commissioners, Defendant.

Recommended Order issued June 17, 1999 by Hearing Officer Gordon Bruce.

Attorneys: John Pratt for Complainant; Dan Johns for Defendant.

Weingarten Rights, Antiunion Animus, Discharge [11.22, 15.44, 21.7, 22.7, 22.74, 35.532, 72.311, 72.317, 72.324, 72.334, 72.361, 74.31, 74.361]

Employer county did not violate 39-31-401 (3) by discharging employee right after union was voted in since no connection between discharge and union activity nor establishment of antiunion animus is made. Employer did violate discharged employee's Weingarten rights and is ordered to post Weingarten rights notice for remaining employees.

ULP Charge No. 17-98, Frenchtown Education Association, MEA/NEA, Complainant, vs. Frenchtown Public Schools, District 40, Frenchtown, Montana, Defendant.

Recommended Order issued June 4, 1999 by Hearing Officer Michael Furlong.

Representatives: Karl Englund, Esq. for Complainant; Don Klepper, Ph.D. for Defendant.

Past Practice, Course Fees, Refusal to Bargain [09.612, 09.662, 11.51, 15.121, 21.5, 43.614, 72.511, 72.612, 72.651, 74.31, 74.361]

Zipper clause in parties' contract obligates them to maintain status quo thus district acted unlawfully in changing past practice of paying for teachers' courses taken for continuing education and salary matrix advance reasons. Board remedy is to make teachers whole by reimbursement and posting of notice to employees detailing violation of 39-31-401 (1) & (5).

Retaliation [11.51, 15.121, 21.5, 43.614, 47.83, 72.134, 72.317, 72.612, 72.651]

District did not violate 39-31-401 (1) & (4) as charged by union when it denied teacher use of course credits toward salary advance on matrix. Union failed to show connection between denial and teacher's victory in previous arbitration decision, timing was wrong.

ULP Charge No. 25-98 and Decertification No. 2-98, Laborers International Union of North America, Local No. 254, Complainant, Steve Lodahl, Petitioner (DC 2-98), vs. State of Montana, Department of Administration, Central Mail Bureau, Defendant.

Recommended Order issued December 8, 1998 by Hearing Officer Joseph V. Maronick.

Attorneys: Karl Englund for Complainant; Vivian Hammill for Defendant.

Failure to provide Information [07.52, 11.21, 15.31, 21.8, 41.7, 43.120, 72.77]

State department did not violate 39-31-401 (1) & (5) and did bargain in good faith. Union requested salary information that private company, not department, possessed, department made good faith effort to obtain information but was unable to do so.

Election Conduct, Blocking Charge [11.21, 15.31, 35.51, 35.61, 37.2, 37.5]

Union member's challenge of decertification election is unsuccessful, employer representative's conduct did not rise to level of negating election which union lost by one vote.

ULP Charge Nos. 26-98 & 27-98, Amalgamated Transit Union No. 381, AFL-CIO, Complainant/Defendant, vs. Board of Trustees, Butte School District No. 1 and Jack McCormick, Defendants/Complainants.

Recommended Order issued April 20, 1999 by Hearing Officer James Keil.

Attorneys: Matthew Thiel for union; Patrick Sullivan for district.

Charges against union:

Regressive Bargaining [09.32, 09.33, 11.51, 15.15, 41.33, 43.11, 73.435, 73.473]

Union did not agree to 1% raise, therefore, it did not bargain regressively. District failed to meet burden of proof. Additionally, union eventually withdrew regressive features of proposals making charge *de minimus*.

Strike [21.8, 43.11, 53.21, 53.71, 62.2, 62.31, 62.36, 62.61, 83.231]

Union did not violate Act by going on strike before issuance of fact finder's report. Nothing about fact finding procedure precludes union from striking nor makes strike illegal. School district stopped strike anyway with TRO issued by district court.

Direct Dealing, Bypassing Bargaining Agent [09.13, 09.32, 73.2, 73.3, 73.440]

Union did not attempt to unlawfully bypass school district's bargaining agent, its personnel director, when it called certain school board members at home. Union members making calls did not attempt to bargain with board members.

Charges against school district:

Misrepresentation in Bargaining [09.32, 09.33, 11.51, 43.11, 72.535]

District made no misrepresentations about raises other bargaining units within district received nor about comparability of union members' pay amounts with other school districts in Montana, thus no bad faith bargaining occurred.

Fact finding, Failure to Make Offer [11.51, 53.21, 53.513, 72.521]

School district did not violate Act by declining to respond to union's last offer made immediately prior to fact finding hearing. Union failed to establish any obligation

on part of district to make one more offer before fact finding, and failed to establish how it is an unfair labor practice.

Failure to Make Offer [11.51, 43.113, 72.532]

Although district's failure to make counter offer triggered strike, it had no obligation to respond to technically regressive offer. No violation occurred.

Threats, Retaliation [09.12, 11.51, 15.15, 43.54, 43.95, 72.13, 72.3521]

While district did make comments about subcontracting union's work, they were not made in context of threats. Consideration of alternatives, such as contracting out, are normal business decisions. District did not attempt to interfere with union's right to engage in concerted activity.

ULP Charge No. 22-2000, Montana District Council of Laborers, Local No. 1334-2, Laborers International Union of America, Complainant, vs. City-County of Butte-Silver Bow, Defendant.

Recommended Order issued February 23, 2001 by Hearing Officer Michael Furlong.

Attorneys: Karl Englund for Complainant; Don Robinson for Defendant.

Retaliation, Union Activities [11.22, 11.23, 15.6, 21.3, 43.352, 43.98, 72.311, 72.324, 72.331, 72.353]

City-county did not violate 39-31-401 (3) when it transferred union steward from afternoon to day shift. Supervisor made stray remark about lack of surprise at steward's statement that he intended to file grievance over transfer, but it was insufficient to establish transfer as retaliation for steward's union activities.

UNIT CLARIFICATION CASES:

UC No. 5-93, Cascade County, Great Falls, Montana, Petitioner, vs. Montana Public Employees Association, Respondent.

Recommended Order issued July 23, 1993 by Hearing Examiner Joseph Maronick.

Attorneys: Patrick Paul for Petitioner; Carter Picotte for Respondent.

Supervisory Employees [01.24, 11.22, 15.32, 36.1, 36.121]

Seven positions county claims as supervisory do not meet threshold requirements of 39-31-103 (11). Job tasks are found to be routine in nature and same as those of coworkers, no exercise of independent judgment is found either.

UC No. 1-94, Montana Public Employees' Association, Petitioner, vs. County of Yellowstone, Montana, Respondent.

Recommended Order issued August 9, 1995 by Hearing Officer Joseph Maronick.

Attorneys: Carter Picotte for Petitioner; Brent Brooks for Respondent.

Accretion [11.22, 15.32, 16.11, 16.21, 16.22, 36.113, 36.121]

Positions that union attempts to have accreted into existing bargaining unit are found not to meet appropriate unit criteria in 39-31-202. Criteria included community of interest, wages, and desires of employees. Following Board precedent, accretion is to be applied sparingly.

UC No. 9-94, State of Montana, Department of Justice, Petitioner, vs. Montana Public Employees Association, Respondent.

Recommended Order issued May 3, 1995 by Hearing Officer Gordon Bruce.

Representatives: Paula Stoll for Petitioner; Carter Picotte, Esq. for Respondent.

Supervisory Employees [11.21, 15.31, 16.31, 16.32, 36.121]

Positions that meet most primary and secondary supervisory tests are removed from existing bargaining unit. Effective recommendation or control rather than final authority is determinative of supervisory status.

UC No. 14-95, Hotel Employees and Restaurant Employees International Union Local 427, AFL-CIO, Petitioner, vs. Montana Federation of State Employees, Warm Springs Independent Union No. 5070, MFT, AFT, AFL-CIO, Petitioner.

Recommended Order issued June 9, 1995 by Hearing Officer Joseph Maronick.

Representatives: Bill Bentley for Petitioner; Secky Fascione for Petitioner.

Appropriate Bargaining Unit [09.231, 11.21, 15.251, 15.253, 22.41, 31.46, 36.1 36.116]

Two unions petition for inclusion of food service custodian into their respective bargaining units. Position has community of interest and bargaining history with unit of food service workers rather than with unit that contains custodians.

UC No. 1-96, Montana Public Employees Association, Petitioner, vs. City of Lewistown, Respondent.

Recommended Order issued January 22, 1996 by Hearing Officer Joseph Maronick.

Attorneys: Carter Picotte for Petition; Monte Boettger for Respondent.

Accretion, Supervisory Employee [09.231, 11.23, 15.6, 16.31, 16.32, 22.41, 36.1]

Newly created superintendent position is excluded from existing bargaining unit because it meets statutory criteria under 39-31-103 (11) for supervisor.

UC No. 5-96, Plumbers and Pipefitters Local Union #41, of Butte, Montana, Petitioner, vs. Montana Department of Corrections, Montana State Prison, Respondent.

Recommended Order issued October 6, 1997 by Hearing Officer Michael Furlong.

Representatives: John Forkin for Petitioner; Bill Bentley for Respondent.

Appropriate Bargaining Unit, Accretion [11.21, 15.6, 43.12, 36.113, 36.121]

Based upon community of interest and desire of employee considerations, boilermaker position is not accreted into plumbers' bargaining unit. No historic bargaining elements exist and no community of interest is demonstrated for boilermaker to be with plumbers.

UC No. 7-96, Montana University System, Petitioner, vs. Vocational-Technical Educators of Montana, No. 4610, MFT, AFT, AFL-CIO.

Recommended Order issued April 27, 1998 by Hearing Officer Gordon Bruce.

Representatives: Sue Hill for Petitioner; Tom Burgess for Respondent.

Inclusion in Bargaining Unit [03.4, 07.13, 11.16, 11.53, 11.55, 15.123, 21.13, 21.3, 21.7, 36.122]

Financial aid director position is kept in instructor bargaining unit as long as incumbent remains in position. Parties' contract historically protected director's vested seniority rights although law protecting those was repealed by legislature. Despite lack of community of interest with rest of bargaining unit, past practice and agreement protect incumbent's tenure.

UC No. 3-97, Cut Bank Education Association, MEA/NEA, Petitioner, vs. Cut Bank Public Schools, Respondent.

Recommended Order issued August 29, 1997 by Hearing Officer Gordon Bruce.

Representatives: Richard Larson, Esq. for Petitioner; Arlyn Plowman for Respondent.

Inclusion in Bargaining Unit, Accretion [01.24, 11.51, 15.121, 21.7, 36.1, 36.121]

While school district doesn't have unfettered ability to categorize employees, "at risk" tutor position does not have overwhelming community of interest with teacher bargaining unit and is not accreted into unit.

UC No. 4-97, Lewis and Clark County, Petitioner, vs. Montana Public Employees' Association, Respondent.

Recommended Order issued February 19, 1998 by Hearing Officer Stephen Wallace.

Attorneys: Paul Stahl for Petitioner; Carter Picotte for Respondent.

Appropriate Bargaining Unit [01.24, 09.24, 11.22, 15.513, 36.121, 36.122]

County failed to show why status quo should be disturbed for administrative convenience in its efforts to remove four landfill positions from one bargaining unit and place them into another. No major changes in duties or supervisory status justifies disturbing collective bargaining rights.

UC No. 9-97, State of Montana, Department of Corrections, Montana State Prison, and Labor Relations Bureau, Department of Administration, Petitioner, vs. Federation of Montana State Prisoner Professional Correctional Nurses, MFSE, MFT, AFT, AFL-CIO, Respondent.

Recommend Order issued January 8, 1999 by Hearing Officer Michael Furlong.

Representatives: Vivian Hammill, Esq. and Bill Bentley for Petitioner; Stacey Collette-Cummings for Respondent.

Supervisory Employees, Nurses [01.24, 03.22, 11.21, 15.211, 16.32, 21.7, 36.121]

Nurse positions meet most of 39-31-103 (11) supervisory criteria, e.g., independent judgment, ability to discipline, appraise subordinates' performance and hire. Duties are not routine nor clerical in nature but exercise of real supervisory power, therefore, they are removed from existing bargaining unit.

UC No. 14-97, State of Montana, Labor and Employee Relations Bureau, Departments of Administration and Justice, Petitioner, vs. Montana Public Employees Association, Respondent.

Recommended Order issued January 30, 1998 by Hearing Officer Gordon Bruce.

Representatives: Bill Bentley for Petitioner; Carter Picotte, Esq. for Respondent.

Supervisory Employee [01.24, 03.22, 11.21, 15.31, 16.32, 36.121]

Cashier supervisor position meets 39-31-103 (11) criteria including assigning work, establishing and evaluating performance standards, training and approving leave requests. Position is properly excluded from bargaining unit.

UC No. 1-99, Glendive Federation of Teachers, AFT, Local #3402, Petitioner, vs. Dawson Community College, Respondent.

Recommended Order issued March 7, 2000 by Hearing Officer Stan Gerke.

Representatives: Michael Hunter for Petitioner; Terry Hetrick for Respondent.

Accretion [09.231, 11.52, 15.122, 15.123, 15.127, 21.3, 36.1]

Collective bargaining agreement between college and professors defines bargaining unit by work performed. Positions that union petitioned to accrete into unit perform described work functions and are therefore included in unit, college is unable to rebut presumption of inclusion.

UC No. 1-2000 (1269-2000), Montana Public Employees Association, Petitioner, vs. Cascade County, Respondent.

Recommended Order issued October 24, 2000 by Hearing Officer Michael Furlong.

Attorneys: Carter Picotte for Petitioner; Dirk Sandefur for Respondent.

Accretion [04.25, 09.23, 15.32, 21.12, 21.13, 36.1]

Although incumbents in positions union petitions to accrete into bargaining unit express desire not to join unit, community of interest factors and contract's recognition clause overrule and are determinative. County's FLSA exemption argument for position's exclusion fails because Collective Bargaining Act provisions are determinative.

UNIT DETERMINATION CASES:

UD No. 2-92, International Brotherhood of Electrical Workers, Local Union No. 44, Petitioner, vs. State of Montana, Department of Natural Resources and Conservation, Employer.

Recommended Order issued August 13, 1992 by Hearing Officer Joseph Maronick.

Representatives: Fred Clark for Petitioner; Paula Stoll for Employer.

Supervisory Employee [01.24, 03.22, 03.3, 11.21, 15.6, 16.31, 16.32, 32.5, 33.42, 34.12]

Plant supervisor at dam facility is excluded from proposed bargaining unit as both a supervisor under the Act and as an engineer-in-training under 37-67-101 (3).

UD No. 28-95, Teamsters Local No. 2, Petitioner, vs. Montana Fish, Wildlife and Parks, Employer.

Recommended Order issued December 18, 1995 by Hearing Officer Joseph Maronick.

Representatives: Patrick McKittrick, Esq. for Petitioner; Paula Stoll for Employer.

Supervisory Employees [01.24, 03.22, 11.21, 15.83, 16.31, 16.32, 33.42]

Totality of primary and secondary supervisory factors excludes 8 supervisor positions from petitioned for bargaining unit. Positions' duties fall within supervisory criteria listed in 39-31-103 (11).

UD No. 5-98, Malta Classified Education Association, MEA/NEA, Petitioner, vs. Malta Public School Districts No. 14 And A, Respondent.

Recommended Order issued April 20, 1998 by Hearing Officer Joseph Maronick.

Representatives: Richard Larson, Esq. for Petitioner; Arlyn Plowman for Respondent.

Part Time Employees, Supervisory Employees, Community of Interest [01.24, 03.22, 11.51, 15.112, 15.12, 15.171, 16.31, 16.32, 21.2, 33.21, 33.343, 33.42]

Prior to election, head custodian, head cook and Title I coordinator positions are determined to be supervisory and thus excluded from unit. Use of independent judgment and direction of subordinate staff are primary considerations. Part time custodian and deaf education instructor positions share community of interest in wages and common supervision with unit and are therefore included.
